

MEMORANDUM OF UNDERSTANDING
between
WASHINGTON STATE DEPARTMENT OF ECOLOGY
and
U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 10
concerning
HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER
(Tri Party Agreement)

I. INTRODUCTION

- A. On February 23, 1996, the U.S. Department of Energy (DOE), the U.S. Environmental Protection Agency (EPA) and the State of Washington Department of Ecology (Ecology) executed Amendment 6 to the Tri-Party Agreement (TPA). Amendment 6 included changes made to achieve a single regulator approach at Hanford.
- B. Pursuant to the TPA, as amended, EPA and Ecology are entering into this Memorandum of Understanding (MOU) to further describe lead regulatory agency (LRA) responsibilities and the circumstances under which the LRA and non lead agency will interact and coordinate activities. These include instances where:
 - 1. The LRA has requested the assistance or involvement of the non lead agency;
 - 2. Ecology lacks legal authority to approve or require action, such as approval of a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remedial action;
 - 3. The non lead agency has a mandatory legal obligation or duty, such as under a permit;
 - 4. EPA is the LRA and Ecology concurrence is sought for a CERCLA remedial action.
- C. Except in certain limited situations, either EPA or Ecology will serve as LRA for each operable unit, treatment, storage and disposal (TSD) group/unit, and milestone, and the non lead agency will generally not be involved. The non lead agency will not assign staff to oversee work at that operable unit or TSD, even though it may have legal authority to do so.
- D. EPA and Ecology will designate a LRA for each operable

unit and each milestone in accordance with section 5.6 of the TPA Action Plan. Ecology will be LRA for all TSD units and groups.

- E. When the LRA requests the assistance or written concurrence of the non lead agency, the non lead agency may concur, consult with, or otherwise assist the LRA as appropriate and as resources allow. In the event of such a request, EPA and Ecology will confer to determine how such assistance will be provided. Ecology may also request the exercise of applicable EPA enforcement authority.

II. CERCLA IMPLEMENTATION

A. Ecology Lead

1. Under Section 120 of CERCLA, EPA and DOE are required to review the results of the remedial investigation and feasibility study (RI/FS) and select the remedial action. If EPA and DOE are unable to agree, EPA selects the remedial action.
2. To satisfy statutory requirements in a manner consistent with the LRA system, EPA and Ecology agree to proceed as follows at CERCLA sites where Ecology is the lead.
 - a. EPA will be involved to the extent necessary to satisfy remedy selection statutory obligations. EPA will generally not be involved in all other matters concerning the operable unit. EPA involvement at these operable units will generally be limited to milestone briefings at specific phases of the project in order to ensure sufficient EPA familiarity with the project and to resolve issues so that EPA will be prepared to approve Records of Decisions (RODs) for remedial action. This includes RODs for interim remedial actions (IRAs), and issuance of a ROD amendment or explanation of significant difference (ESD).
 - b. Ecology will work with EPA to address/resolve any EPA issues or concerns before RODs for remedial action are approved by signature. If EPA and Ecology cannot agree such that EPA is willing to sign the ROD, Energy will be notified and any dispute will be addressed in accordance with the TPA Part 3 Dispute

Resolution procedures, which provide for the participation of all three TPA parties.

- c. EPA will generally not be involved in overseeing implementation of RODs at Ecology lead sites. No implementation briefings are required, though EPA may request status reports from time to time.
- d. EPA will generally not be involved in any other response actions taken or proposed at Ecology lead sites. EPA will generally not participate in the review of engineering evaluation/cost analyses (EE/CAs) or in the approval of expedited response actions (ERAs).

B. EPA Lead

- 1. Ecology involvement at these sites will essentially be limited to remedial action milestone briefings. These briefings will be used to provide Ecology with information on the proposed remedial action and to determine Ecology's willingness to concur on the ROD. Ecology may choose not to concur on the ROD. Ecology may request status reports on ROD implementation from time to time.

C. Joint Lead Sites

- 1. EPA and Ecology will assume primary oversight responsibilities for activities at these sites according to each agency's role and responsibilities at the site. The agencies will conduct regulatory oversight activities in a manner that directs resources to complimentary rather than redundant activities.

D. Milestone Briefings

- 1. The milestone briefings include:
 - a. PROJECT PLANNING BRIEFING - The LRA will present the conceptual project model and outline how the project will be managed, including plans for investigating the site and for conducting ERAs. The non lead agency will provide input, as appropriate, regarding technical, legal, and resource implications. The LRA will prepare the informational briefing package. Based on prior project

knowledge/experience, the non lead agency may agree to forego this briefing.

- b. PROPOSED PLAN BRIEFING - Before issuance of the proposed plan, a briefing by the LRA will be provided to determine the non lead agency's willingness to approve/concur, and if not, to identify issues.
- c. REMEDY SELECTION BRIEFING - Following the proposed plan and response to public comment, a follow-up briefing will be held, if comments or new information warrant reconsideration of the proposed remedy. The LRA will prepare the briefing package.

E. Briefings Procedure

- 1. NOTIFICATION - The LRA will notify the non lead agency point of contact approximately one month before the briefings. The proposed plan briefing will be a "peer review meeting." Upon notification, the non lead agency designates a site team or individual (for EPA it may include project managers, an attorney, and others; for Ecology it may include the Project Manager, unit managers and/or functional team leaders, the appropriate section manager, and an attorney), to shepherd the substantive and administrative elements of the remedy selection process through to conclusion and selection/concurrence by the authorized agency manager (for EPA it is the Regional Administrator (RA); for Ecology it is the Program Manager, Nuclear Waste Program).
- 2. The LRA project manager will coordinate briefing meeting dates with the non lead agency. The LRA project manager will provide a briefing package to the non lead agency site team or individual two weeks before the meeting.

The EPA point of contact for logistics is the Office Manager, Hanford Project Office.

The Ecology points of contact for logistics are: (1) the Kennewick Office, Perimeter Section Secretary, and (2) the Kennewick Office, 200 Area Section Secretary.

- 3. PROPOSED PLAN BRIEFINGS - The proposed plan strategy

should represent the LRA and DOE's best effort at developing an approach that meets technical, legal and policy objectives. These briefings are an opportunity for peer and management review to identify any problems with the strategy, provide solutions, and ensure greater consistency with sites involving similar media and contaminants. The proposed plan phase is initiated with an internal peer review meeting before issuance of the proposed plan and concludes at the end of the public comment period.

- a. The LRA project manager will provide a 2-3 page briefing package, plus figures and tables, approximately 2 weeks before the peer review meeting. The briefing package will describe the site characteristics and need for action; applicable, relevant and appropriate requirements (ARARs); remedial action objectives (RAOs); alternatives considered and their respective costs; technical and policy issues; operating facility description; pathways/receptors; Model Toxics Control Act (MTCA) and CERCLA cleanup levels; the proposed remedy; and rationale for selection of the proposed remedy as related to CERCLA remedy selection criteria.
- b. The LRA project manager will present the preferred alternative at the peer review meeting. In addition to information provided in the briefing package, the LRA project manager and DOE should address:
 - ◆ Comparison - to sites with similar media (e.g., soils vs. sediments), contaminants (e.g., polychlorinated biphenyls, metals, etc.), geographic settings;
 - ◆ Other agency involvement - state, local, tribes, natural resource trustees;
 - ◆ Community input - Hanford Advisory Board, interest groups, sensitive populations.
4. The non lead agency site team/individual may indicate general agreement on the proposed plan strategy at the peer review meeting, but final approval cannot be obtained until non lead agency management is briefed up through the agency's

authorized decision maker (for EPA it is the RA, for Ecology it is the Program Manager, Nuclear Waste Program). Alternatively, the LRA RPM project manager, DOE and the non lead agency site team/individual may revise the strategy as appropriate in response to issues raised at the peer review meeting.

5. DOE and the LRA RPM project manager will draft the proposed plan for review by the non lead agency site team/individual. The non lead agency will provide comments on the proposed plan to the LRA project manager. Non lead agency comments should focus on major policy and technical issues. When the proposed plan is revised in response to non lead agency comments, an EPA agency upper management briefing will be scheduled (to include the Hanford Office Unit Manager, Office Director, and RA, as appropriate). The EPA site team will schedule the briefing of EPA upper management. Where Ecology is the LRA, the Ecology project manager will be invited to attend and jointly present the proposed plan with the EPA site team.
6. Once EPA approval is obtained, DOE will issue the proposed plan. Where Ecology is the LRA, DOE and Ecology will conduct any public meetings on the proposed plan. EPA will attend the public meeting and may participate, as appropriate, since EPA is required by statute to select the remedy along with DOE. Where EPA is the LRA, Ecology will generally not be a formal participant in the public meeting, but may attend as a regulatory agency.
7. DECISION DOCUMENT - After the end of the public comment period, the LRA project manager and DOE will consolidate and summarize the written and oral public comment on the proposed plan. The LRA project manager will contact the non lead site team/individual and discuss the substance of public comment and determine whether any changes are warranted to the preferred alternative.
8. If no substantive changes to the Proposed Plan are warranted, the LRA project manager will proceed to draft the ROD. For EPA lead sites, Ecology concurrence would be expected without further briefing. For Ecology lead sites given statutory requirements, the Ecology project manager and DOE will submit an advanced draft of the ROD to the EPA

site team for review and comment. EPA will provide comments on the ROD to Ecology. Once EPA comments have been incorporated, the EPA site team will request via memo the RA's approval by signature on the ROD without further additional briefing.

9. If substantive changes to the preferred remedy are warranted, a draft copy of the ROD will be provided to the non lead agency for review. Depending on the extent of modifications necessary, an additional briefing of LRA management may take place. Non lead agency attendance at subsequent briefings is not necessary.
10. The LRA will provide a copy of the final ROD to the non lead agency.

F. National Priority List (NPL) Deletion

1. The criteria for deleting sites from the NPL is set forth at 40 C.F.R. § 300.66(c)(7). The deletion process may begin after approval of the Close Out Report by the EPA RA if EPA and Ecology concur that deletion should proceed, and after RA approval of at least one five-year review at those sites which require five year reviews.
2. Ecology may request that EPA consider deleting a site, or EPA may initiate the process on its own initiative. To assist in making the decision whether to proceed, the LRA will provide a deletion milestone briefing for the non lead agency. During the briefing, the LRA will provide, as appropriate, information on: site background, investigations, response actions taken, performance of remedy in meeting cleanup goals, operation and maintenance activities, results of "5 year reviews," and community relations activities. The LRA will also summarize how the site satisfies deletion criteria. Based on prior project knowledge/experience, the non lead agency may agree to forego this briefing.
3. EPA will retain responsibility for providing notice to the tribes and to the natural resource trustees, and for publishing the "Notice of Deletion." For those sites where Ecology is the LRA, DOE and Ecology will assist by providing EPA with documentation necessary to support deletion. Although the types and/or titles of documents may vary depending on the types of response (e.g.,

remedial action, removal, no-action), the following provides an initial list of documents that should be considered in preparing a deletion docket.

- remedial investigation reports
 - feasibility study reports
 - action memoranda for removals
 - On Scene Coordinator (OSC) reports for removals
 - RODs for each operable unit, including any ROD amendments or Explanation of Significant Differences
 - design plans and specifications
 - data (including quality assurance/quality control) confirming that the remedial action undertaken achieved final cleanup goals
 - construction inspection reports
 - documentation of state concurrence on deletion
 - operation and maintenance plan
 - close out report
 - initial five year review report, where appropriate
 - community relations plan
 - transcripts from public meetings addressing the adequacy of the remedy or public sentiment regarding the proposed deletion
 - responsiveness summary for Notice of Intent to Delete
 - bibliography of documents
4. All pertinent information supporting EPA's deletion recommendation will be placed in the site deletion docket.
5. The LRA will draft a responsiveness summary in response to comments received on the Notice of Intent to delete. EPA will finalize the summary and will be responsible for publishing a final Notice of Deletion in the Federal Register if EPA and Ecology decide to proceed after considering public comment. EPA will also issue a fact sheet announcing deletion of the site from the NPL.
6. These same procedures apply to partial deletion actions.

III. HAZARDOUS WASTE MANAGEMENT ACT (HWMA) AND RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) IMPLEMENTATION

- A. Ecology will be the LRA for all TSD units and groups. In accordance with the single regulator principle and as a matter of prioritizing its workload, EPA will generally NOT be devoting resources to duplicate or concur on state HWMA regulatory work. EPA will not oversee activity subject to state rules, including rules that have not yet been authorized but which are substantially equivalent to RCRA. Therefore, EPA will not be routinely co-signing or concurring on state documents. Ecology will be the single point of contact, regulator and decision maker for all activities subject to the HWMA.
- B. EPA will fulfill any mandatory obligations it has under the EPA issued Hazardous and Solid Waste Amendments (HSWA) permit. In addition, upon the request of Ecology, or as otherwise appropriate as part of its state program oversight responsibilities, EPA may participate in other matters as resources allow. In the event that EPA involvement in a specific matter is requested by Ecology or is otherwise necessary, Ecology will brief EPA, and EPA will become involved to the extent necessary to help resolve the specific matter.
- C. In fulfilling its responsibilities, EPA will rely to the extent it can on the work done by Ecology as the LRA. Briefings as well as planning meetings may be used to facilitate EPA action. EPA and Ecology will conduct periodic planning meetings to discuss issues/future site regulatory needs, and the respective Ecology/EPA roles and responsibilities. Any disputes concerning RCRA that arise that cannot be resolved at these meetings may be referred by either EPA or Ecology for resolution pursuant to Article XXVI of the TPA.
- D. RCRA matters for which state does not have equivalent authority
 - 1. If there are any RCRA matters for which the state does not have substantially equivalent state regulations, Ecology will remain the LRA and point of contact for DOE, but may request EPA regulatory action. If EPA takes action, it will rely to the extent it can on the work done by Ecology as the LRA. Briefings as well as planning meetings may be used to facilitate EPA action.

IV. GENERAL PROVISIONS

- A. Both Ecology and EPA will continue to be involved in budget matters (implementation of TPA paragraphs 148 &

149), revisions to the TPA legal agreement or Action Plan, modifications of major milestones, site scoping, and delineation of operable units/projects.

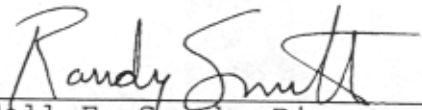
- B. EPA and Ecology will continue to inform each other as early as possible of significant issues that arise, and of approaches they may take as LRA that may be inconsistent with or otherwise affect work at sites for which they are not the LRA.
- C. Changes to the TPA and to major milestones require the signature of all three parties (in accordance with Section 12 of the TPA Action Plan). All other changes may be executed by DOE and the LRA without the participation of the non lead agency. The LRA will provide courtesy advance notification to the non lead agency of proposed changes of any significance. If there are different regulatory leads for different components of a milestone (and in the few situations where EPA and Ecology serve as joint regulatory lead), the concurrence of all three parties will be required.
- D. Nothing in this agreement alters the statutory authorities or responsibilities of EPA, the Department of Ecology or the Department of Energy, including EPA's RCRA program oversight and enforcement authorities.
- E. Nothing in this document is intended to affect any provision or requirement of CERCLA, RCRA, the HWMA, the National Contingency Plan or applicable EPA and Ecology rules, policy or guidance. This document is intended to benefit only EPA and Ecology. It extends no benefits or rights to any party not a signatory to this MOU.
- F. This MOU may be modified or terminated by mutual consent of Ecology and EPA. It may also be terminated with 60 days written notice by either Ecology or EPA.
- G. The terms of this MOU shall not be construed as a waiver of any right, privilege or authority on the part of any of the Parties.

V. EFFECTIVE DATE

- A. This MOU will become effective upon the date of signature by both Parties and will continue in effect unless modified or terminated.

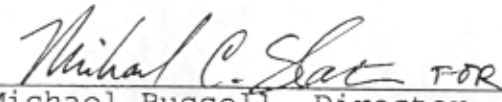
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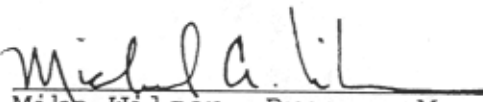
Randall F. Smith, Director
Office of Environmental Cleanup
EPA Region 10

August 19, 1996
Date



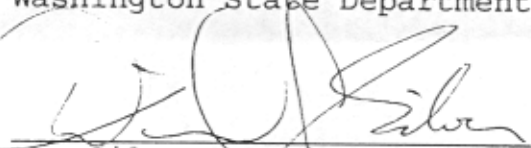
Michael C. Slat FOR
Michael Bussell, Director
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EPA Region 10

8/19/96
Date



Mike Wilson, Program Manager
Nuclear Waste Program
Washington State Department of Ecology

8/23/96
Date



Dan Silver, Assistant Director
Waste Management Division
Washington State Department of Ecology

8/27/96
Date